

### **REMARKS**

Claims 1-11 are currently pending in the application. By this response, no claims are amended, added or canceled. Reconsideration of the rejected claims in view of the following remarks is respectfully requested.

#### ***35 U.S.C. §102 Rejection***

Claims 1-11 were rejected under 35 U.S.C. §102(b) for being anticipated by U. S. Patent No. 6,006,486 issued to Moriau et al. ("Moriau"). This rejection is respectfully traversed.

To anticipate a claim, each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference. MPEP §2131.

The Examiner asserts that Moriau teaches or suggests all of the features of the claimed invention. Applicants respectfully disagree and submit that Moriau does not show each and every element of the claims, and therefore does not anticipate the claims.

#### **Independent Claims 1 and 5**

The present invention is related to a floor panel. Claim 1 recites, in pertinent part,

... further comprising form-fitting elements for locking in the vertical direction (V) with a further panel formed on a second side edge running at an angle to the first side edge, wherein the form-fitting elements are spaced apart from one another in the transverse direction (Q) and in the vertical direction (V) on two spaced-apart, essentially vertically oriented walls ...

Claim 5 recites, in part:

... a second side edge extending in a transverse direction to the first side edge and having form-fitting elements for locking in a vertical direction with a further panel, wherein the form-fitting elements are spaced apart from one another in the vertical direction and the transverse direction.

These features are not shown by Moriau.

The Examiner is of the opinion that Moriau discloses these features in Figures 22-25, lines 23-25 of column 3, and lines 36-39 of column 6. More particularly, the Examiner asserts that element 9 is a first form fitting element and element 6 is a second form fitting element for locking in the vertical direction. Applicants respectfully disagree.

Moriau does not show a panel having a side having form fitting elements for locking in the vertical direction where the form fitting elements are spaced apart from one another in the vertical and transverse direction, as recited in the claimed invention. Instead, Moriau shows in FIGS. 22-25 a preferred embodiment of the invention in which parts corresponding with other embodiments are indicated with like reference characters (col. 9, lines 58-62). In FIG. 22, Moriau shows a side 2 of a panel 1 having a tongue 9 formed on a substantially vertical wall (near 88). When tongue 9 is received in

the groove 10 of another panel, the upper surface of the tongue 9 abuts against the lower surface of the groove 10 and locks the panel 1 in the vertical direction.

Moriau does not, however, disclose that side 2 has a second form-fitting element for locking in the vertical direction, as recited in the claimed invention. Contrary to the Examiner's assertions, element 6 does not lock panel 1 in the vertical direction.

Instead, element 6 locks the panel 1 in the transverse direction. Inspection of FIGS. 22-25 reveals that element 6 will not prevent panel 1 from moving upward in the vertical direction when coupled with another panel. Therefore, element 6 is not for locking in the vertical direction, as recited in the claimed invention. In fact, Moriau explicitly states that "locking parts or elements 6 ... prevent the drifting or sliding apart of two coupled floor panels in a direction D ... parallel to the underside of the coupled floor panels..." (col. 5, lines 30-33). Therefore, Moriau does not disclose a side of a panel having spaced apart form-fitting elements for locking in the vertical direction, and does not anticipate claims 1 and 5.

#### Independent Claim 11

Claim 11 recites, in part:

... a second side edge extending in a transverse direction to the first side edge and having a first relief comprising an inner wall, a first form-fitting element arranged on the inner wall, an inner shoulder wall, an essentially horizontally oriented head surface, an outer wall, and a second form-fitting element arranged on the outer wall; and  
a side edge opposite the second side edge having a second relief comprising an other outer wall, a first undercut corresponding to the first form-fitting element arranged on

the other inner wall, an other head surface, a shoulder wall, a base surface, an other head surface, an other inner wall, and a second undercut corresponding to the second form fitting element arranged on the other inner wall, wherein the form-fitting elements are structured and arranged to engage undercuts of a substantially identical panel.

Moriau does not contain these features, and, therefore, does not anticipate claim 11.

The Examiner is of the opinion that Moriau discloses these features in Figures 22 and 23. More particularly, the Examiner asserts that: the wall to the right side of element 81 at the bottom of FIG. 23 is an inner wall; the surface where elements 6 and 74 extend transversely from the inner wall constitutes an essentially horizontally oriented head surface; and element 6 constitutes a first form fitting element arranged on the inner wall. Furthermore, the Examiner asserts that element 10 is a first undercut and that the depression formed by surfaces 36 and 73 is a second undercut. Applicants respectfully disagree.

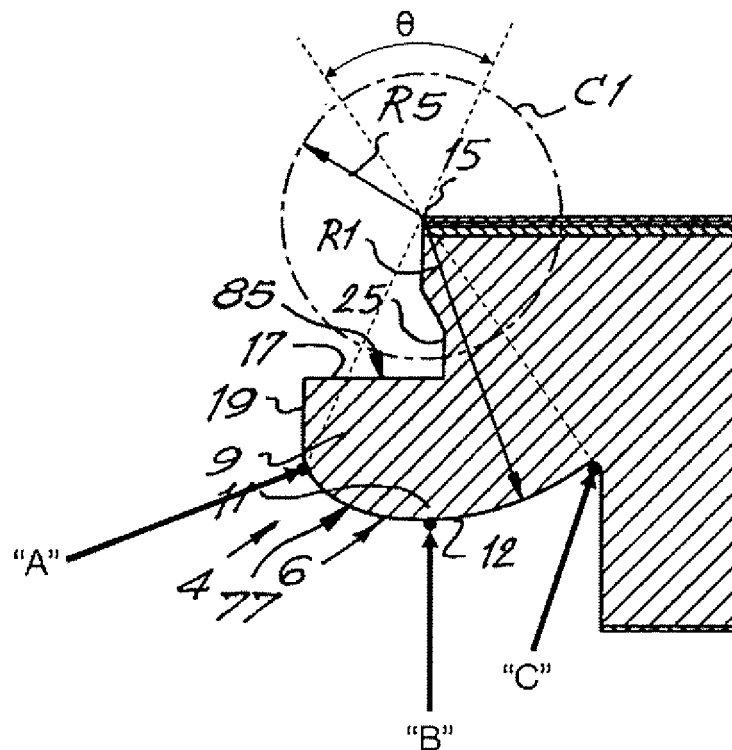
As discussed above, Moriau shows a panel 1 with side 2 in FIGS. 22-23. Applicants agree that side 2 comprises an inner wall, outer wall, first and second form-fitting elements, and an essentially horizontally oriented head surface. However, contrary to the Examiner's assertion, Moriau does not show that the first form fitting element 6 is arranged on the inner wall. Rather, the essentially horizontally oriented head surface is arranged on the inner wall, while element 6 is arranged on the essentially horizontally oriented head surface. In other words, element 6 is arranged on the essentially horizontally oriented head surface, not on the inner wall. Therefore, Moriau does not contain each and every feature of the claimed invention.

Moreover, Moriau does not disclose a side edge having a relief comprising first and second undercuts, as recited in the claimed invention. Instead, Moriau shows that panel 1 has a side edge 3 opposite side edge 2, where side edge 3 comprises a first undercut 10 and a depression formed by walls 36, 73 that correspond to the form fitting elements 6, 9 of side edge 2. Contrary to the Examiner's assertion, the depression formed by surfaces 36 and 73 is not an undercut as recited in the claimed invention. Applicants submit that the Examiner is failing to give the term "undercut" its plain and ordinary meaning as required by MPEP §2111.01. The plain and ordinary meaning of the term "undercut" is "the action or result of cutting away from the underside or lower part of something" (see Merriam Webster's Collegiate Dictionary, Tenth Edition, emphasis added). Applicants submit that the depression formed by surfaces 36 and 73 is not is not the result of cutting away from the underside of any portion of panel 1, and therefore is not an undercut. Moreover, the depression formed by surfaces 36 and 73 does not function in the same way as the undercut of the claimed invention. That is, the undercut of the claimed invention, when in contact with a corresponding portion of an adjacent panel, prevents the adjacent panel from moving upward in the vertical direction. However, the depression formed by surfaces 36 and 73, when in contact with a corresponding portion of an adjacent panel, only prevents the adjacent panel from moving sideways in the transverse direction (but does not prevent the adjacent panel from moving upward in the vertical direction). For these reasons, Applicants submit that Moriau does not disclose first and second undercuts, and does not anticipate claim 11.

Dependent Claims

Applicants submit that claims 2-4 and 6-10 depend from an allowable base claim, and are allowable at least for the reasons discussed above. Moreover, Applicants submit that Moriau does not disclose many of the features of the dependent claims.

For example, Moriau does not show that a radius of curvature of the contour of the underside of the tongue is constant over at least 90 degrees, as recited in claims 2 and 6. In fact, it is clearly seen in FIG. 2 of Moriau that the radius of curvature R1 of the underside 12 of the tongue is not constant over at least 90 degrees. Moriau shows a tongue 4 with underside 12, which has a radius of curvature that originates at point 15 (see FIG. 2 reproduced below). For the radius of curvature of the underside 12 to be constant, the length of every line from point 15 to any point on underside 12 must be equal. For the radius of curvature to be constant over at least 90°, this equality must be true for all points along underside 12 through an angle of at least 90°. However, close inspection of FIG. 2 reveals that the radius of curvature R1, which originates at point 15, has different lengths at different points along the underside 12. For example, the length of R1 at point "A" is different from the length of R1 at point "B". Likewise, the length of R1 at point "C" is different from the length of R1 at both "A" and "B". In other words, the radius of curvature R1 of the underside 12 of the tongue has different lengths at points "A", "B" and "C", and, therefore, is not constant over angle  $\theta$ .



Moreover, even assuming *arguendo* that the radius of curvature R1 is constant over the angle  $\theta$ , which Applicants do not concede, inspection of FIG. 2 reveals that the subtended angle  $\theta$  is less than  $90^\circ$ . Thus, Moriau does not show that the radius of curvature of the underside of the tongue is constant over at least  $90^\circ$ , as recited in the claimed invention.

Furthermore, Moriau does not disclose a channel formed in an essentially horizontally oriented head surface, as recited in claims 4 and 10. The Examiner asserts that the horizontal surface extending to the right of slanted surface 74 (FIGS. 22, 23) constitutes an essentially horizontally oriented head surface, and that dust chamber 81 is a channel formed therein. Applicants disagree. Dust chambers 81 (FIG 23) are not

formed in any surface of panel 1. Instead, the dust chambers 81 are formed by corresponding surfaces of two respective panels that are connected as shown in FIG. 23. However, as shown in FIG. 22, the dust chambers 81 are not formed in any surface of the panel 1. Thus, Moriau does not disclose a channel formed in an essentially horizontally oriented head surface, and does not anticipate claims 4 and 10.

Accordingly, Applicants respectfully request that the rejection over claims 1-11 be withdrawn.



### CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicants hereby make a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 19-0089.

Respectfully submitted,  
Thomas GRAFENAUER

A handwritten signature in black ink, appearing to read 'Andrew M. Calderon', is written over a horizontal dashed line.

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